

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONNELL HOLMES,

Defendant-Appellant.

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UNPUBLISHED

April 20, 2006

No. 259586

Wayne Circuit Court

LC No. 04-007184-01

Before: Murphy, P.J., and O’Connell and Murray, JJ.

MEMORANDUM.

Defendant was charged with possession of marijuana, MCL 333.7403(2)(d), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Following a bench trial, he was acquitted of the marijuana charge and convicted of the two weapons offenses. He appeals his convictions as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that his convictions violate the constitutional prohibition against double jeopardy. Inasmuch as the same argument was considered and rejected in *People v Calloway*, 469 Mich 448; 671 NW2d 733 (2003), and *People v Dillard*, 246 Mich App 163; 631 NW2d 755 (2001), we find no error.

Defendant next argues that the evidence was insufficient to sustain his convictions, or that the verdict was against the great weight of the evidence. Specifically, he disputes the sufficiency or weight of the evidence that he actually possessed a weapon.

The officers testified that they saw defendant holding a gun, which he then dropped. A gun was found in the immediate area. This evidence, if believed, was sufficient to prove possession. *People v Avant*, 235 Mich App 499, 505-506; 597 NW2d 864 (1999); *People v Espinosa*, 142 Mich App 99, 102-103, 106; 369 NW2d 265 (1985); *People v Reynolds*, 38 Mich App 159, 161; 195 NW2d 870 (1972). Although defendant contends that the officers’ testimony was not credible, witness credibility is a matter of weight, not sufficiency. *People v Scotts*, 80 Mich App 1, 9; 263 NW2d 272 (1977). The issue of witness credibility is one for the trier of fact to determine, *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991), and this Court “will not resolve credibility issues anew on appeal,” *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002).

A motion for a new trial may be granted where the verdict was manifestly against the clear weight of the evidence, i.e., the evidence so clearly weighed in the defendant's favor that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadowski*, 232 Mich App 24, 28; 592 NW2d 75 (1998); *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993). The evidence was clearly sufficient to sustain the verdict and a ruling based on the credibility of witnesses is not grounds for a new trial absent exceptional circumstances, which circumstances are not present here. *People v Lemmon*, 456 Mich 625, 643-644, 647; 576 NW2d 129 (1998). Any discrepancies in the officers' testimony did "not preponderate so heavily against the verdict that it would be a miscarriage of justice to let the verdict stand." *People v McCray*, 245 Mich App 631, 638; 630 NW2d 633 (2001).

Affirmed.

/s/ William B. Murphy  
/s/ Peter D. O'Connell  
/s/ Christopher M. Murray